

DANIEL J. TULLY, *admitted pro hac vice*
dtully@omm.com
O'MELVENY & MYERS LLP
400 South Hope Street, 18th Floor
Los Angeles, California 90071-2899
Telephone: +1 213 430 6000

LISA A. RASMUSSEN (NV Bar No. 7491)
lisa@nvlitigation.com
MCLEITCHIE LAW
602 South 10th Street
Las Vegas, Nevada 89101
Telephone: +1 702 728 5300

MEAGHAN VERGOW, *admitted pro hac vice*
mvergow@omm.com
O'MELVENY & MYERS LLP
1625 Eye Street, NW
Washington, DC 20006-4061
Telephone: +1 202 383 5300

Attorneys for Plaintiff Donald Sherman

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DONALD SHERMAN,

Plaintiff,

v.

HAROLD WICKHAM, in his personal
capacity; KIM THOMAS, in his personal
capacity; WILLIAM GITTERE, in his
personal capacity and in his official capacity as
Deputy Director of Operations of the Nevada
Department of Corrections; BRIAN
WILLIAMS, in his official capacity as Deputy
Director of Programs of the Nevada
Department of Corrections; WILLIAM
REUBART, in his personal capacity and in his
official capacity as Warden of Ely State
Prison; DAVID DRUMMOND, in his official
capacity as Associate Warden of Ely State
Prison; and TASHEENA COOKE, in her
official capacity as Associate Warden of Ely
State Prison,

Defendants.

Case No. 3:21-cv-00168-ART-CSD

**JOINT STIPULATION TO
CONTINUE STAY OF SCHEDULING
ORDER AND DISCOVERY PLAN**

(Ninth Request)

Hon. Anne R. Traum
Hon. Craig S. Denney

JOINT STIPULATION TO CONTINUE STAY OF CASE MANAGEMENT SCHEDULE

Pursuant to LR IA 6-1 and LR 26-3, counsel for Plaintiff Donald Sherman and counsel for Defendants Harold Wickham, Kim Thomas, William Gittere, Brian Williams, William Reubart, David Drummond, and Tasheena Cooke respectfully submit this joint stipulation to continue the stay of the current case management deadlines stated in the Court’s December 2, 2022 Order granting the Parties’ Joint Motion to Extend Discovery and Scheduling Deadlines, *see* Dkt. No. 78 (the “Order”), in order to permit the parties to explore a global settlement relating to Plaintiff’s claims, *see* Dkt. No. 95.

This is the ninth stipulation to stay the current scheduling Order. The Court previously stayed and extended case management dates on six prior occasions pursuant to the parties’ stipulation. *See* Dkt. Nos. 70-71, 94-95, 101-02, 107-08, 109-10, 111-12, 114-15, 116-17. The parties request to continue the stay of the case management schedule to allow them to continue mediation efforts to explore a global settlement of Plaintiff’s claims.

Plaintiff filed a First Amended Complaint on July 18, 2022, adding five new defendants—Gittere, Williams, Reubart, Drummond, and Cooke—in addition to Defendants Wickham and Thomas, who Plaintiff named in the original Complaint. *See* Dkt. No. 57. The newly added Defendants returned waivers of service of the summons on September 23, 2022, and filed an answer to the First Amended Complaint on October 18, 2022. *See* Dkt. Nos. 65-69, 72. Additionally, Plaintiff filed a Renewed Motion for Preliminary Injunction on June 2, 2022. *See* Dkt. No. 47 (the “Motion”). On August 3, 2022, Judge Denney issued a Report and Recommendation Granting in Part Plaintiff’s Motion. *See* Dkt. No. 62. Defendants thereafter filed objections to Judge Denney’s Report and Recommendation. *See* Dkt. No. 63. On March 29, 2023, Judge Traum issued an Order Overruling Defendants’ Objections to Magistrate Judge Denney’s Report and Recommendation. *See* Dkt. No. 80. In that order, the Court directed the parties to “meet and confer regarding the specifics of Sherman’s access to the sweat lodge.” *See id.* at 17. On March 28, 2023, Defendants filed a Notice of Appeal of the Court’s March 29, 2023 order. *See* Dkt. No. 84. Following the filing of Defendants’ notice of appeal, the Ninth Circuit ordered the parties to participate in a mediation conference with the Circuit Mediator and

thereafter stayed the briefing schedule by ninety days. *See* Ninth Circuit Case No. 23-15665, Dkt. Nos. 5, 9, 11. The Parties participated in eleven mediation conferences, during which time the Ninth Circuit continued the stay on the appellate briefing schedule for an additional 90 days. *See id.*, Dkt. Nos. 9, 12-13, 15, 17, 18-24; *see also* D. Nev. Case No. 3:21-cv-00168, Dkt. Nos. 82, 88, 91, 93, 97, 100, 104. On December 8, 2023, the parties filed a Joint Stipulation Relating to Proposed Relief for Plaintiff's Renewed Motion for Preliminary Injunction outlining the specifics of Plaintiff's access to the sweat lodge at Ely State Prison, which the Court subsequently granted. *See id.*, Dkt. Nos. 105-06.

The parties are now working on a global resolution of Plaintiff's claims under the Ninth Circuit Mediation Program. In the interest of conserving the Court's and the parties' resources, and in order to permit the parties to continue negotiating a resolution of the case, counsel for the parties jointly request to continue the stay of the current case management dates granted by the Court on November 4, 2024. *See* D. Nev. Case No. 3:21-cv-00168, Dkt. No. 117.

Counsel for the parties have met and conferred regarding this Stipulation and proposed stay, and no party objects to the requested stay. This Stipulation is being made in good faith and not for the purpose of delay.

DISCOVERY COMPLETED TO DATE

Plaintiff and Defendants have exchanged their mandatory initial disclosures. Prior to the filing of the First Amended Complaint, Plaintiff propounded written discovery on Defendant Harold Wickham, and Defendant Wickham timely responded to such written discovery requests. On April 4, 2023, Plaintiff propounded requests for production and interrogatories on Defendants Wickham, Cooke, Drummond, Gittere, Reubart, Thomas, and Williams. As of the date of this filing, Defendants have not yet responded to those written discovery requests.

DISCOVERY YET TO BE COMPLETED

Plaintiff is awaiting Defendants' responses to the April 4, 2023 requests for production and interrogatories. After receiving Defendants' responses, Plaintiff intends to propound additional written discovery. After written discovery has been propounded and responded to, Plaintiff intends to notice depositions consistent with the Federal Rules of Civil Procedure and

the Local Rules. Similarly, Defendants intend to serve written discovery and notice a deposition of the Plaintiff according to applicable rules. The parties will meet and confer regarding expert discovery and will submit an appropriate stipulation, consistent with the Local Rules, for the Court's consideration if expert discovery is anticipated.

REASONS FOR REQUESTED CONTINUANCE OF STAY

The parties request to continue the stay of the current case management deadlines so that they can explore a resolution of the case under the Ninth Circuit Mediation Program.

PROPOSED TIMELINE

Through this Stipulation, the parties hereby respectfully request that the Court enter an order continuing the stay of the currently imposed case management deadlines set in the Order. The parties further stipulate that, no later than forty-five days from December 16, 2024, they will file a report apprising the Court of the status of their settlement negotiations, and, if necessary, a further stipulation relating to the case management schedule for the Court's review and approval.

Therefore, **IT IS HEREBY STIPULATED AND AGREED** between the parties, through their counsel, and subject to the Court's approval, that the Court's Order is stayed until this Court enters a new scheduling order.

Respectfully submitted,

Dated: December 16, 2024

O'MELVENY & MYERS LLP

By: /s/ Meaghan VerGow
Meaghan VerGow

Attorneys for Plaintiff Donald Sherman

Dated: December 16, 2024

MCLETSCHIE LAW

By: /s/ Lisa A. Rasmussen
Lisa A. Rasmussen

Attorney for Plaintiff Donald Sherman

Dated: December 16, 2024

OFFICE OF THE NEVADA ATTORNEY
GENERAL

By: /s/ Chris W. Davis
Chris W. Davis

Attorney for Defendants Harold Wickham et al.

IT IS SO ORDERED.

Dated this 17th day of December, 2024.



Honorable Craig S. Denney
United States Magistrate Judge